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ABSTRACT

The provisions of "sunshine" or "open meeting" laws are discussed to assist governing boards and chief executive officers of public universities and colleges. These laws stipulate that the business of the public must be conducted in public. Topics include: the legal constitution of a meeting, personnel matters, collective bargaining, consultation with counsel, and the acquisition of property, interpersonal dynamics within the sunshine context, and perspectives of the press. Definitions are provided for: open meeting or sunshine laws, an executive session, sunset legislation, freedom of information laws, and right to privacy. Illustrations from different states are cited, and vignettes show issues that relate to long-range planning. The influence on these law on interaction between the governing board and the institution's chief executive officer is addressed, along with the ability of the board to function as a group. It is suggested that the local press plays a key role in the enforcement of provisions calling for open meetings of public bodies. Guidelines are offered for boards that seek to review and/or recommend changes in the sunshine laws in their respective states. A chart is appended that indicates for each state the key issues for which executive sessions may be called. (SW)

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THE IMPACT OF SUNSHINE/OPEN MEETING LAWS ON THE GOVERNING BOARDS OF PUBLIC COLLEGES AND UNIVERSITIES

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> It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants.
>
> *Par. 90, "Legislative declaration"*
> *Chapter 511, Laws of New York, 1976*

In every one of our fifty states, and in the federal government, legislation that goes under the common label of "Sunshine" or "Open Meeting" laws has been enacted. The basic theme of all such legislation is the notion that the business of the public must be conducted in public, i.e., "in the Sunshine."

While much of the public support for recent Open Meeting laws can be traced to the post-Watergate "reform" movements in government, some states, such as California and Massachusetts, have a traceable twenty year history of Open Meeting legislation. The era of Senator Joseph McCarthy has been cited as the impetus for some 1950's legislation on open meetings.

This report is written to assist governing boards and chief executive officers of public universities and colleges to understand the provisions of Open Meeting laws, and thereby govern more effectively. Following some brief definitions, such key areas of concern as the legal constitution of of a meeting, personnel matters, collective bargaining, consultation with counsel, and the acquisition of property will be considered; interpersonal dynamics will be discussed within the Sunshine context; and, the perspectives of the press will be reviewed.

It is interesting and important to note, at the outset, that it appears impossible to find any responsible public official who will oppose the basic concept of the Open Meeting law. Rather, attention focuses on whether any areas of public business should be excluded from open consideration, and, if so, what those areas are.

SOME DEFINITIONS

OPEN MEETING or SUNSHINE LAWS are statutes that require that meetings of public bodies be held in public. Generally, they include provisions requiring advance public notice as to time, place, and agenda items of meetings of public bodies; that such meetings be held open to the public; often, that the public have some format for contributing to the discussions of issues; and, that an official record of such meetings must be available to the public.

An EXECUTIVE SESSION is a meeting held by a public board, or a committee of that board, that is not open to the public. The most fundamental question involved in governance under Open Meeting laws is the determination of those topics that warrant a board's moving from public into Executive session. Related questions include whether any decisions may be made in those closed sessions, and the nature of records that must be kept and reports that must be made when an Executive session is concluded. Items permitted for discussion in Executive session in different states are examined as a major facet of this report.

SUNSET LEGISLATION is sometimes confused with Sunshine laws; Sunset legislation requires the termination of governmental agencies after a fixed and specified period of time unless those agencies are specifically renewed by legislative action.

FREEDOM OF INFORMATION LAWS normally focus on documents that are in governmental and public agency files; these laws require the availability of governmental documents to the public, in reasonable form, and at reasonable cost. While not normally directly tied to Sunshine legislation, except insofar as Sunshine laws require that a record of the actions of public bodies be available to the public, Freedom of Information laws do appear to emerge from the same rationale that has led to such wide acceptance of Sunshine laws.

RIGHT TO PRIVACY legislation focuses on the rights individuals have to privacy; sometimes, as shall be seen, there may be an area of overlap between those issues involving open meetings and those involving privacy.

WHAT CONSTITUTES A MEETING?

"All meetings of two or more members of any board, committee, commission or other policy making or rule-making body of any state agency or authority or of the legislature, at which any public business is discussed, or at which any formal action is taken by such board, committee, commission or other policy-making or rule-making body, are declared to be public meetings open to the public at all times, except as may be otherwise provided in the constitution." *Section 4, Chapter 3, Article 33-1, Colorado Revised Statutes 1963, as Amended in 1972. (Subsequently, further amended).*

In Minnesota, the Attorney General's opinion has been that the state's Open Meeting law applies to any meeting of a majority of a quorum of a board, i.e., given a board of 12, a quorum is 7, and a majority of that quorum is a meeting of four or more members of the University's Board.

Appeals courts are considering cases which will help to define, for New York State, the percentage of membership of a board that is necessary to constitute a meeting, as well as whether "study sessions" at which no formal actions are taken can be held as closed meetings.

In Texas, a "meeting" is defined to consist of all proceedings at which a majority of the members of the governing body consider or take final action. Social gatherings, conventions, and workshops are not "meetings" as long as no formal action is deliberated.

The definition of a "meeting" evidently varies from state to state. In those states where one statewide university board is gathered from across the state for periodic meetings, the traditional informal dinner the evening before a formal meeting has generally been eliminated. On the other hand, when all members of a university board live within a fifty mile radius of that school's campus, and these same men and women meet on hospital boards, in business, and in social and service organizations, it would appear impossible to preclude informal discussions of board issues from time to time. Dick Tucker, a contributing columnist in the *Colorado Statesman*, reduced the question to its final absurdity by pointing out that: "The provision for advance notice of two or more legislators meeting in private is ridiculous. A strict interpretation of that would prohibit a man and wife, who happen to be in Congress, from going to bed without inviting the press in to watch and listen." *(February 19, 1977).*

With respect to the legal constitution of a meeting, as with other questions to be examined, the issue of intent must be considered. Two regents or trustees who meet at a golf course and, over cocktails, spend ten minutes discussing an issue that is facing their board is quite different from a

"study session" at which members of a board decide which one of them will get the insurance package for the college for the next year, who will have the vehicle maintenance package, and who shall build the new multi-winged library for the campus.

TOPICS WHICH MIGHT BE CONSIDERED IN EXECUTIVE SESSION

Executive sessions are most commonly suggested for the governing boards of public colleges and universities when four particular areas are being discussed: Personnel matters; collective bargaining; consultation with legal counsel; and the acquisition of property. Laws and practices vary from state to state on these issues.

PERSONNEL MATTERS. Two types of personnel issues are of particular significance in the context of Open Meetings... the appointment of high level administrators, and the non-renewal or termination of personnel for cause.

Most states allow closed or Executive sessions on sensitive personnel matters. As an example, the Regents of the University of California may hold Executive sessions to consider or discuss "matters relating to the appointment, employment, performance, compensation, or dismissal of officers and employees, excluding individual regents other than the president of the university; (and) matters relating to complaints or charges brought against officers or employees of the university, excluding individual regents other than the president of the university unless such officer of employee requests a public hearing." *(Sections g & h of Article 3 of Section 92030 of the California Education Code.)*

On the other hand, all candidates for positions in the State University System of Florida (at least at the level of Dean and up) are formally advised, in letters acknowledging their application or nomination, that "in accordance with Florida's 'Sunshine Amendment' to the State Constitution, their dossiers are a matter of public record and are available, upon request, to its residents." *(From a letter of acknowledgement written by the Vice President for Academic Affairs at a public Florida institution to an applicant for a position; February, 1978).* And, in Minnesota recently, the three top candidates for a state college presidency were formally interviewed in public.

In Massachusetts, where there are seven reasons allowed for going into Executive session, including for discussions of the reputation, character, and physical or mental health of individuals, a new President was elected at the University of Massachusetts in May 1978. Professional credentials of the five final candidates were discussed in public session. Then an Executive session was called to discuss the reputation and character of the finalists. Following a closed discussion, a closed first ballot was taken. The tally of the ballot, on which no candidate received a majority vote, was announced. A second closed ballot was taken, producing a majority vote for one candidate. The tally of that second ballot was announced, and the successful candidate was named and appointed. Suit has been brought against the Trustees by the Massachusetts Newspaper Publishers Association for violation of the State's Open Meeting laws by the Trustee's alleged discussion of the professional competence of the five finalists in Executive session, and by the election of the new president by secret ballot.

The question of whether a person's candidacy for a top position at a public institution should be public has been explored in some depth.

A clear and strong majority of trustees and regents, professors of higher education, and chief executive officers of public institutions have expressed strong opposition to the recruitment of top personnel in the Sunshine. The common thread running thru discussions of this issue is that some of the best prospective candidates will not apply if their candidacy is to be public. Theoreticians have hypothesized this to be the case, and board members in states with laws similar to the Florida law have been able to cite, in confidence, specific situations in which this hypothesis is in fact reality. Reasons cited for an unwillingness to serve as a candidate in a public search and screening process have been suggested to include: the possibility of a negative impact on the relationship between the candidate and his/her own board if the candidacy for a position elsewhere is known; an unwillingness to face the possibility of being a publicly known candidate who did not win a position; and, time problems in reaching and informing necessary people privately of one's candidacy before that candidacy might come to their attention thru the media. While it might even be helpful to a Dean on that Dean's own campus to be known as a serious contender for a college presidency, it might not serve the large university president well to be known as a candidate (and, particularly, an unsuccessful candidate) for a smaller state college presidency in a personally or family-preferred geographical location.

Another question raised in relation to open discussions of prospective presidents relates to references. Will a current employer, or members of the board of the candidate's present institution, be willing to give frank and sometimes

critical appraisals of a candidate if those appraisals will be part of the public record? On the other side of the reference question is the issue of the candidate's "right to know" what his/her referees are saying.

Those who do speak for recruitment and appointment in the sunshine recognize that good candidates might be lost, but they suggest that such a loss is less significant than the overall principle of openness for all public business.

It should also be noted, both in this particular discussion and with respect to other issues as well, that this report addresses the conduct of business at public colleges and universities. In other areas -- as, perhaps, in the election of a superintendent of schools -- some arguments might be made from a more historical tradition of local control of schools, including total public information on all issues. Even school boards, however, have historically met in closed sessions to discuss such issues as the purchase of land for new schools, and to discuss individual personnel cases; further, the same questions raised about the constricting effects of open candidacies on college presidential searches can be raised with respect to searches for superintendents of schools.

Most states do allow closed sessions for discussions of terminations, and for hearings on charges raised against an employee, except where the individual employee involved requests an open hearing. In those several states that do not allow closed sessions for consideration of dismissal, complaints, or charges, astute observers are anticipating that, at some point in the near future, an individual whose professional and personal reputation have been publicly discussed can be expected to bring suit based on a violation of one's right to privacy. The new Federal Sunshine act

specifically allows closed meetings for the discussion of information whose disclosure would constitute an unwarranted invasion of personal privacy. In some states, however, a judicial clash between Open Meeting and Privacy principles can be foreseen.

COLLECTIVE BARGAINING. "You know that people are serious about bargaining when they stop talking to the press." *(John Dunlop, at Harvard University, December 8, 1976).*

Most states that have legislation enabling collective bargaining to take place also have legislation stipulating that collective bargaining can take place in closed sessions. Connecticut, for example, allows closed sessions for strategy or negotiations in collective bargaining. In Oregon, "Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. *(ORS 192.660, section 2, paragraph 3).*

Some university-level negotiations in Iowa have been held in open session, but provision is made for "sidebars" -- private and confidential discussions during negotiations between the two chief negotiators, usually held to explore ways of breaking deadlocks, and to seek possible areas of compromise.

In the state of Florida, however, all collective bargaining sessions must be held in the Sunshine. To date, two contracts have been negotiated in the Sunshine between the State University System of Florida and its faculty... and, admittedly to the surprise of some seasoned observers, the process has worked.

Observations made about the public negotiating sessions in Florida, and some generalizations based on those open sessions as seen within a historical context of closed and private negotiations, include:

---In Florida, the tone of the negotiations has been calm and serious, with more honest communication and less "game playing" than is usual.

---With the presence of the press, and of students (and, in particular, the student press), there is an increased opportunity for either side to "make mischief;" further, in an open situation, an experienced negotiator could easily destroy the effectiveness of the leadership of the other negotiating team by destroying that team's credibility to its constituents...however, this would only serve to delay and make more difficult any mutually acceptable agreement.

---In closed negotiating sessions, negotiators for labor and management can confidentially lay on the table those issues that are of key strategic importance to the respective sides, in order to seek necessary accomodations and compromises; in open sessions, the negotiators may not be willing to be that frank.

---In open sessions, the negotiators lose control over the real relative importance of agenda items, as the press may pick up and emphasize those issues that it sees as important.

---Open sessions place a premium on expertise on both sides of the bargaining table. For example, an inexperienced negotiator, taking a public stance on an issue, may be backed into a corner from which it is rather difficult to compromise, making it harder for an agreement to be reached without rancor. Furthermore, it is difficult to help a person on the other side of the table out of an inadvisably taken stance in open negotiations.

---Experienced negotiators can generally leave the table, after a settlement has been reached, with a feeling of completion and without residual hard feelings; when the public has been a party to all issues raised and all strategies employed, however, there is more of an air of permanence to some of the differences between labor and management, increasing the chances for antagonistic feelings which can carry on after the negotiations are completed.

In summary, then, most practitioners support the notion that negotiations should be excepted from Open Meeting requirements. In the State of Florida, where it is a misdemeanor for any bargaining to be attempted behind closed doors, negotiations have been conducted in public successfully, and with honest communications and seriousness of purpose. Finally, it is generally suggested that, should there be a situation where hostility and bitterness are the predominant tone of either side coming into negotiations, the possibility of major long term damage to the best interests of both sides, and to the institution that they hold in common, are greatly increased if those negotiations are conducted in the Sunshine.

CONSULTATION WITH LEGAL COUNSEL. Privileged (private) consultation with legal counsel is one of the exceptions to Open Meeting requirements in some state laws. General statements allowing counsel with a board's attorney are in effect in such states as Hawaii and Maryland; only discussions of proposed or pending litigation may be undertaken in closed session in such states as Kentucky and Ohio.

In a number of states where privileged consultations with attorneys have not been included in the legislation, the courts have been asked to address and rule on the question.

In Arkansas, where executive sessions are permitted by the state's Freedom of Information Act (1967) only for consideration of employment matters, the courts found that the wording of the legislation (that "except as otherwise specifically provided by law," all meetings of public entities were to be open) superceded the general attorney-client privilege that had been codified in the statutes, as the general privilege was not specific to the case in question. *(Laman v McCord, 1968, 245 Ark 401, 432 SW 2d 753).* Similarly, in Florida, the court took the position that the public had waived the attorney-client privilege available to a public entity with the passage of the state's Sunshine law, with the very narrow and specific exception of situations where public consultation by a public body with its attorney on pending or impending litigation would force the attorney to violate the canons of ethics as promulgated by the state supreme court. *(Times Publishing Co. v Williams, 1969, Fla App, 222 So 2d 470).*

On the other hand, in California, where counsel with an attorney was not specifically included as one allowable reason for an executive session, the courts found that the public meeting laws did not abrogate a public entity's right to private consultation with its counsel on proper occasions, and that both of these enactments (Open Meetings and Right to Private Counsel) could operate concurrently so long as the privilege of private legal consultation was not overblown beyond its true dimensions. *(Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors, 1968, 263 Cal App 2d 41, 69 Cal Rptr 480).*

State laws, then, and varying state court decisions in the absence of specific legislation, have determined the existence or absence or privileged legal consultation in the several states.

PURCHASE, LEASE, AND DISPOSITION OF REAL PROPERTY. Transactions relating to real estate have long been allowable, in most states, as a reason for generally open school boards to meet in private session; the continuation of this policy has been written into the Sunshine legislation of about half of the states.

The range of real estate transactions is large. In Ohio, where legislation appears to allow closed discussions of the purchase of real estate, the sale of publicly owned property apparently requires a public bidding procedure, and the lease of real estate is apparently not an Executive session topic. It has been suggested, however, that there are occasions when it would be in the public interest for a sale of public property to be negotiated privately, as, for example, when a prospective purchaser might be willing to offer significantly more privately than is likely to be brought thru public bids.

It must be noted, on the other hand, that real estate transactions have a particular aura of susceptibility to private benefit; the cost of deciding such transactions in Executive session, in terms of public faith and trust in governing boards, can be high.

LONG RANGE PLANNING, INTERPERSONAL DYNAMICS, AND THE ABILITY OF THE BOARD TO GOVERN

A Board of Trustees or Regents is a collection of individuals -- sometimes elected, sometimes appointed -- with varying constituencies -- who must meet, discuss, and collectively make decisions on a wide range of issues.

In addition to meetings at which final decisions on issues are made, many other types of meetings of Boards of Trustees had historically been held...including social gatherings, informal discussions, study sessions, and "blue sky" long range planning efforts. Most of these kinds of meetings are no longer held.

Opinions vary widely as to the long range impact of Sunshine legislation -- which prohibits most informal meetings, thereby reducing informal interpersonal interactions -- on the human factors that facilitate or hinder groups of people that seek to come to reasonable decisions by a process of approaching consensus.

LONG RANGE PLANNING. Three quick vignettes illustrate some of the issues that relate to long range planning:

1) In an institution that is partially publicly and partially privately funded (as we have in a number of states including Pennsylvania and New Jersey), a Board wishes to meet to consider a range of options regarding income projections over the ensuing five year period. The Board wishes to consider all options, including possible fluctuations in student enrollment, a possible decline in endowment income, a possible change in grant and research support, and a possible decline in state support.

   Can that institution's Board publicly discuss possible declines in state support without, by the very consideration of its possibility, inviting such a cut? On the other hand, can the Board plan realistically without considering such a possibility, particularly in an atmosphere of expanding "taxpayer revolt?"

2) The Board of a public university hires consultants to study and discuss planning options for several separate campuses. These options might include merging some facets of the separate campuses, related personnel reorganizations, and possible reductions of staff. If the Board labels this study as a personnel matter, and therefore meets in Executive session, would the press be successful in challenging the Executive session in court?

3) Some groups approach the early stages of long range planning by seeking a listing of all possible directions that might be taken, without examining the particular merits of any one possibility until all possibilities are listed. Techniques such as "brainstorming" are used. A Board begins to explore long range options in this fashion, in the Sunshine. The press reports some of the more unusual suggestions made, and even gets a prominent anti-educational member of the legislature to comment negatively on those suggestions. What is the impact on future creative but atypical suggestions? What is the impact on future relationships between the Board and the press?

INTERACTION BETWEEN THE BOARD AND ITS CHIEF EXECUTIVE OFFICER.

In situations where the law states that a discussion between two or more members of a board constitutes a meeting, and with campus chancellors or presidents usually members of the board, even telephone conversations between campus executives and board members become proscribed.

Even in somewhat less restrictive situations, the chief

executive officer of the campus is generally unable to meet with the board collectively, to bring issues before the board in an informal briefing session.

In the barest reality, it is frequently necessary for the chief executive officer and the board president to confer, and to make some decisions, on issues ranging from day-to-day operations on campus to legislation under active consideration in the state house. Furthermore, it would be extremely difficult (as well as preposterous) to maintain active surveillance on all telephone conversations between board members and their chief executive officer. Rather, the issue here becomes primarily one of intent, and of outcomes. If telephone consultations are used to address immediate and pressing problems, and if the business of the board is not pre-discussed and pre-settled, that it would at least appear that no one is circumventing the Sunshine laws. The apparent logic of that position, however, might be supported or reversed by the courts in various states. It would appear, further, that the public's perception of the burden of proof regarding intent in such situations would rest with the president and board members.

ABILITY OF THE BOARD TO FUNCTION AS A GROUP. New Jersey statutes do not condemn chance encounters between members of a board. North Carolina law permits chance or social meetings without requirements for public presence. Texas law allows social gatherings, conventions, and workshops, so long as no final action is considered. In most states, however, as has been noted, such informal events as dinners of members of the Board preceding meetings of the Board have been eliminated.

Some seasoned members of boards bemoan the loss of informal interaction among board members. They feel that their boards have lost a factor that is posited as important

in the effective functioning of any group -- the ability to develop rapport, a sense of other people's positions and interests, and a related sense of trusting (or not trusting) certain colleagues on various issues.

Others who have worked on and with boards recognize the validity of the concern for informality and for group dynamics, but they suggest that the disadvantages of extended social interaction -- summarized by one person as "governance by clique" -- far outweigh the advantages.

Observers in such states as California and Iowa, with at least ten year histories of university governance in the Sunshine, suggest that fears that public scrutiny and reporting will inhibit interactions among board members are real and common when Open Meeting laws are introduced. They report further, however, that, after a rapid period of maturation, openness is expected, business is attended to, issues are discussed fully in the open, and both board members and the press become, if anything, more responsible in their actions.

THE PRESS

Sunshine laws do not address themselves to the rights of the press; rather, they are about meetings being held open to the public. With the exception of special interest groups on particular issues, however, the public presence is most often represented by the press.

--PRESS UPHOLDS SPIRIT OF LAW--

In Colorado, in 1976, the State Attorney General and a legislator combined forces to slip in one sentence on the ninth page of a nineteen page bill that, when subsequently interpreted by that same Attorney General, extended the applicability of the state's Sunshine Law to the University

of Colorado's Board of Regents.

Denver's *Rocky Mountain News* began its editorial on June 24, 1976, by stating:

> Since the Sunshine law's overwhelming approval by Colorado voters four years ago, this newspaper has vigorously opposed all attempts to weaken or circumvent it.
>
> We were disappointed when the State Supreme Court ruled last November that the University of Colorado Board of Regents weren't covered by the law and are therefore free to bar the public and press from meetings at their discretion.
>
> But we are equally disappointed that State Atty. Gen. (M) felt the proper and only reaction to the court decision was to mastermind a deception on the State Legislature.

The editorial went on to say:

> Why then did they adopt essentially the same tactics in sneaking the regents provision through the Legislature? Does a noble purpose justify ignoble means?
>
> Of course, the irony of (M) 's maneuverings is that they go sharply against the grain of the very law he was seeking to strengthen... Sneaking a bill through the General Assembly without notifying the party to be affected technically may not violate the sunshine law, but it certainly violates its spirit.

This editorial reflects the basic attitudes that have been exhibited by most of the press -- a firm dedication to open meetings, with a concern, at the same time, for appropriate and responsible behavior both from public officials and from the press itself.

--PRESS EMPHASIZES DIFFERENT ISSUES--

It has been observed that, among a number of issues raised at board meetings, the press may highlight items that are different from those that the board or academic community might see as being of more major significance.

The press in certain midwestern states, for example, has focused more on sports issues, on occasion, than on academic issues considered at the same meeting. This occasional tendency is noted primarily to avert surprise and/or dismay on the part of new members of a board.

--PRESS DISILLUSIONED BY SCOFFLAWS--

In the Commonwealth of Massachusetts, an early open meeting law of 1958 was signficantly amended in 1975. At that time, newspaper publishers opposed the inclusion of fines and penalties for failure to honor the law. Newspapers thruout the state distributed "Miranda Cards" to their reporters, with a listing of several basic statutes and rights, including the seven legal reasons for holding Executive sessions in Massachusetts. Experiences since the passage of the 1975 act have led to:

---publishers who now favor the addition of penalties to the law;

---a determination that the University of Massachusetts was independent of the Open Meeting law;

---legislation in 1978 specifically extending open meeting requirements to the University; and,

---a lawsuit brought by Massachusetts publishers against the members of the Board of Trustees of the University of Massachusetts, relating to the naming of a new president, as has been noted above.

--PRESS HELPS CLARIFY LAW--

Cases noted as being before the New York State Appelate Division, dealing with the definition of "meeting," have been brought by the press. *(Orange County Publishers v Council of the City of Newburgh).*

--PRESS IMPACTS ON PROCESS--

In discussing long range planning, the presence and possible impact of the press has been particularly noted. In situations where the press seizes early suggestions, board members become cautious about airing positions prematurely. In some few situations where elected board members need a platform, posturing for the press has been noted. Some board members may hesitate to ask questions which might reflect ignorance on a particular question, or hesitate to answer a question by saying "I don't know," if they fear that their ignorance will be reported by the press.

--PRESS SUPPORTS STRONG LEGISLATION--

In Pennsylvania, where court decisions have somewhat restricted the impact of the state's 1974 Open Meeting law, the press is supporting "corrective" legislation.

--PRESS FOCUSES ON IMPORTANT ISSUES--

In Texas, the media has been favorably characterized as focusing on important issues relating to open meetings, rather than "hassling" about such questions as informal social gatherings.

In summary, then, the local press plays a key role in the enforcement of provisions calling for open meetings of public bodies across the country. The press represents the public interest. It reports to the public more effectively now as a result of its greater access to the decision-making process. According to observers, the presence of the press has generally not tended to stifle discussion after initial break-in periods; board members are seen to be somewhat more businesslike and

serious with the press present; and both the public and the student press have generally been assessed to be responsible, in their turn, as honest and fair reporters. In fact, over time, it can reasonably be anticipated that governance in the Sunshine will help build trust and respect for trustees and regents as they go about their business in the presence of the press.

DIMENSIONS OF A REASONABLE SUNSHINE LAW

For boards that seek to review and perhaps recommend changes in the Sunshine laws of their respective states, the following guidelines, drawn from the research presented above, are suggested.

It appears that the key issues to be considered in formulating Sunshine laws appropriate to the effective governance of public colleges and universities would revolve around the purposes for which Executive sessions might be held.

1) Personnel Matters. The clearest consensus among observers in states that both do and do not allow closed discussions of personnel matters is around the position that at least certain personnel items -- notably recruitment and appointment of personnel -- should be discussed in confidence. The loss of qualified candidates, and the quality of references that can be expected, seem to weigh heavily on the side of closed discussions of these matters.

The rights of individuals against whom charges are made, and the rights of those employees considered for dismissal, would appear to similarly require confidential treatment, except where those individuals request a public hearing.

Discussions of the "character and reputation of individuals, a topic sometimes included with and sometimes

listed separately from personnel issues, similarly deserves the option of confidentiality.

2) Collective Bargaining. Collective bargaining has taken place successfully in the sunshine. The majority of observers, however, basing their judgments more on a total history of confidential negotiations in both public and private sectors than on several isolated recent open cases, do tend to continue to favor closed negotiating sessions. It is interesting to note, however, that some negotiators for and observers of public boards have begun to express an opinion that management's best interests may in fact be served by open sessions in the public sector. We probably do not have sufficient data yet on negotiations conducted in the Sunshine to make final judgments on this question.

3) Consultation with Legal Counsel. Generally, the inclusion of privileged consultations are recommended when those consultations relate to pending or imminent litigation, or for an opinion about a board's possible liability should certain decisions be reached. Privileged consultation with counsel is open to abuse fairly easily, however, and some restrictions as to its use are quite reasonable.

4) Property Transactions. Purchase of property is a topic considered appropriate for closed discussions in more than half of the states. Here again, restrictions imposed in some states do appear reasonable --- as, in Kentucky, where discussions of real property transactions may be held in closed session only when public knowledge might adversely affect value.

5) Other matters which can bear on collegiate governance that are sometimes included as topics allowable for closed discussions may include security and public safety, judicial proceedings, gifts and bequests, investments, licensing exams, and the awarding of honorary degrees.

GOVERNANCE IN THE SUNSHINE

As was noted at the outset, support for the concept of Open Meetings is broadly based. Members of governing boards have themselves been active in support of Sunshine provisions; in Executive sessions, when a discussion begins to wander from the particular topic for which the Executive session was called, board members themselves are generally quite quick to correct and redirect the discussion.

The advice suggested repeatedly by experienced trustees and regents is that it is crucial for all board members to know the provisions of the Sunshine law under which they govern, and to be careful to work within those provisions. Such facts as the number of people in the particular state whose presence constitutes a meeting; the amount of lead time necessary for posting notice of meetings, and the topics which may be discussed in Executive session must be part of the basic information known by every trustee. With those facts in mind, and with clear intent to govern within established legal restrictions, the existence of Sunshine laws can serve in many ways to help Boards of Trustees and Regents of public colleges and universities effectively carry out their public mandate.

Appendix

A BRIEF SUMMARY OF THE KEY ISSUES FOR WHICH EXECUTIVE SESSIONS MAY BE CALLED, BY STATE

State	Personnel	Reputation & Character	Bargaining[1]	Counsel	Property	Others, Notes[2]
Alabama		*				
Alaska		*				Adverse financial effect
Arizona	*	*	*	*		Interstate, international negotiations
Arkansas	*	*				
California	*	*		*	*	Administration of exams, honorary degrees, gifts, investments
Colorado	*	*	*	*	*	
Connecticut	*	*	*	*	*	Social meetings, public security
Delaware	*	*	*	*	*	Student discipline, public safety, training sessions
Dist. Columbia	*					
Florida			(1)			All open
Georgia	*	*			*	
Hawaii		*	*	*	*	Public safety
Idaho	*	*	*		*	
Illinois			*	*	*	Campus security
Indiana						Closed sessions not permitted if they would defeat the purpose of the act.
Iowa	*	*	*		*	New (for 1979) law cuts out old broad statement allowing closed meetings "for compelling reasons."

State	Personnel	Reputation & Character	Bargaining	Counsel	Property	Others, Notes
Kansas						Executive session on majority vote for any reason, but no binding action
Kentucky	*	*	*	*	*	
Louisiana	*	*	*	*		Security, emergencies
Maine	*	*	*	*	*	
Maryland	*	*	*	*	*	Protection of individual privacy
Massachusetts		*	*	*	*	Security
Michigan	* see note	*	* (1)	*	*	Applications for positions can be closed; interviews must be open
Minnesota				*		
Mississippi						With a 3/5 affirmative vote may go into Executive session to discuss and take action on any business
Missouri	*	*		*	*	Military
Montana	*	*				If need for privacy exceeds merits of public disclosure
Nebraska			*	*	*	For discussions such as, but not limited to, those indicated; no action in closed session
Nevada	*	*				
New Hampshire	*	*			*	Action allowed in Executive session on issues indicated
New Jersey	*	*	*	*		For the protection of personal privacy, safety

State	Personnel	Reputation & Character	Bargaining	Counsel	Property	Others, Notes
New Mexico	*	*				
New York	*	*	*	*	*	Administration of exams, public safety
North Carolina	*	*	*	*	*	Social meetings
North Dakota						All open unless statutory provision for closing
Ohio	*	*	*	*	*	Security
Oklahoma	*	*				
Oregon	*	*	*(1)	*	*	
Pennsylvania	*	*				30 minute limit for Executive sessions
Rhode Island	*	*	*	*	*	Investment of public funds
South Carolina	*	*		*	*	
South Dakota	*	*				Student matters
Tennessee						Everything open. Legislature has final say on hiring chief executive officer
Texas	*	*			*	Student discipline, security, social meetings, conventions, workshops
Utah						Executive sessions allowed, but no final action can be taken in closed session
Vermont	*	*		*	*	Public safety
Virginia	*	*		*	*	General rules noted; Open Meeting law does not apply, however, to the Higher Education boards

State	Personnel	Reputation & Character	Bargaining	Counsel	Property	Others, Notes
Washington	*	*			*	National security
West Virginia	*	*			*	Student discipline
Wisconsin	*	*	*	*	*	Investing public funds
Wyoming	*	*	*	*	*	Administration of exams, student discipline, security
U.S. Federal Government	*					National defense, when openness would violate privacy, foreign policy, matters affecting financial stability

1) In most states where bargaining is not listed as permissible in closed session, collective bargaining is not legislatively sanctioned, at least in the public sector. As noted in the text of the report, bargaining in Florida does take place in the Sunshine; bargaining in Michigan and in Oregon are closed at the request of either party, suggesting an atmosphere for open bargaining sessions in those states.

2) Provisions for judicial and/or criminal matters, which are closed in all states, are not included in the listing.

3) The issues indicated as permitted for consideration in closed session in the various states are as correct and up-to-date as could be ascertained; this listing, however, is an indication of general trends and patterns for the reader, rather than a formal legal guide. Trustees in each state should, of course, be familiar with the specifics of their own state's legislation, and with changes in that legislation as it is considered and enacted.